IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1173 OF 2004.

Maruti Ganpat Waje & Ors. ..Appellants.

VERSUS.

The Special Land Acquisition Officer
No. 24, Pune. ..Respondent.

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Mr. S.S.Deshmukh for the Appellants.

Smt. G.P. Mulkar, AGP for the State.

CORAM: S. B. MHASE &
R. S. MOHITE, JJ.

DATE : NOVEMBER 4, 2004.

P.C.:-

1. This first appeal is filed by the appellants challenging the judgment and decree dated 9.7.2004 passed by the XIth Ad-hoc Additional District Judge, Pune whereby the land reference filed by the appellants is rejected.

2. The land of the appellants had been acquired for the Chaskaman Project Affected Persons Rehabilitation Scheme. The award in question was passed on 30.9.1992 and the notice under section 12(2) of the Land Acquisition Act was issued on 2.11.1992 and the land reference has been filed on 14.12.1992. However, the finding has been recorded by the Ad-hoc Additional district Judge, Pune on

this aspect that the land reference is within limitation. However, the learned counsel appearing for the State submitted that if at all the matter is remanded back to give an opportunity to lead evidence in the matter, then the said finding may be set aside. We are not in agreement with the learned counsel. It was open for the learned counsel to file a cross objection. However, we have also mentioned the dates above and have ascertained on the finding recorded by the court below and we are satisfied that the finding in respect of the limitation is rightly given.

3. We find that the trial court appears to be annoyed with the absence of appellant on several dates and several adjournments taken by the appellants and their Advocates. The appellants have remained absent on the date of the hearing and therefore, the trial court has proceeded with the matter in the absence of the appellant and rejected the matter. It has lost sight of the fact that according to law each adjournment is granted for is on sufficient casue being shown. Therefore, it is a judicial decision and those adjournments cannot be counted for the purpose of coming to a conclusion that the absence on that particular date is for protraction of trial. It is possible that there may be appropriate and sufficient cause or ground to remain absent. In fact, when the party

making reference is absent at the time of hearing of the matter, it is appropriate to dismiss the matter for default in stead of deciding the matter on merit because in that event it gives an opportunity to the applicant in Land Reference, of filing application for restoration wherein applicant can show sufficient cause or ground to get the matter restored. This course is not adopted by the trial court in the present case. Why the trial court did not adopt this course is not refelected from the judgment. Apart from that aspect, one more important aspect to which the trial court has overlooked is that the proceeding under section 18 of the Land Acquisition Act, 1894 are for getting an enhanced compensation of the land acquired by the government. These are the lands compulsory acquired for the Project Affected Persons which is a public purpose of the Respondent State. Therefore, a citizen who has lost his property under the compulsory acquisition shall not be dealt with in the manner in which the trial court has dealt with. There shall be a sympathetic approach. The trial court shall sympathetically consider the absence of the appellants and should have given at least a final opportunity with an intimation. Had the said course been adopted, it would have been more fair to the appellants. If the trial court had followed this course then it would have been appropriate for the trial court to record finding that

seeking adjournment and/or remaining absent was intentional one so as to protract the trial of the land reference. Court has failed to follow this procedure. The court have forgotton that the appellants are interested in the enhanced compensation and for that purpose they had approached the court and they will not avoid to attend the court unless there is good reason. In the circumstances, in the absence of finding that the absence of the appellants was intentional one to protract the trial, the order passed by the court below is not sustainable in law.

4. The learned counsel appearing on behalf of the appellants submitted that henceforth the appellants will not remain absent and will participate diligently in the trial for the disposal of the land reference. In view of this, we allow this appeal at the admission stage. However, we fix the schedule for the hearing in the trial court. We, therefore, pass the following order.

O R D E R.

The appeal is hereby allowed.

The appellants along with their Advocates shall remain present in the trial court on 10.1.2005

and inform the court that they are appearing in the matter. The appellants shall file documents on which they want to rely upon in support of their claim on or before 18.1.2005. They shall file the list of witnesses and obtain summons to the witnesses which will be called in the court on or before 25.1.2005. The evidence in the matter shall commence from 1.2.2005. If State wants to lead evidence, it can also lead evidence. The recording of evidence shall be over by 18.2.2005. In any event, by 11.3.2005, the trial court shall dispose of the matter, on merits by judgment. This schedule should be meticulously followed and both parties are directed to co-operate with the trial court in the early disposal of the matter.

Cost in cause.

. All concerned, including the trial court, to act on an ordinary copy of this order duly authenticated by the Registry of this court.

(R.S.MOHITE,J.) **(S.B.MHASE,J.)**